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Attorneys for Craig Asset Holdings, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

BEAZER HOMES HOLDINGS CORP.,

Plaintiff,

vs.

CW CAPITAL FUND ONE, LLC;
CORONADO WEST, INC.; and NEW
SOUTH FEDERAL SAVINGS BANK,

Defendants.

Case No. 2:09-CV-02089-RCJ-LRL

**AMENDED MOTION TO
SUBSTITUTE CRAIG ASSET
HOLDINGS, LLC AS PROPER
PARTY DEFENDANT, CROSS-
PLAINTIFF, AND THIRD-PARTY
PLAINTIFF**

Craig Asset Holdings, LLC, an Alabama limited liability company ("Craig"), moves this Court for entry of an order substituting, pursuant to Fed. R. Civ. P. 24(a)(2), 24(b)(1), and 25(c), Craig as defendant to the claims asserted by Beazer Homes Holding Corp. ("Beazer") and as cross-plaintiff and third-party plaintiff in the claims asserted against CW Capital Fund 1, LLC ("CW"), and John C. Cork ("Cork"), respectively in place of LPP Mortgage Limited ("LPP") in the above-captioned action. This Court previously granted LPP's Motion To Intervene As Defendant And Substitute As Cross-

1 Plaintiff And Third-Party Plaintiff (“LPP’s Motion”) which motion was filed on May 3,
2 2010, Docket 36.

3 Beazer and the Federal Deposit Insurance Corporation (“FDIC”) (as receiver for
4 New South Federal Savings Bank (“NSFSB”)), notably the only parties who have
5 appeared in the above-captioned action, consent to the granting of this motion. Neither
6 CW nor Cork have appeared.

7 1. In support of its motion, Craig states that it is a limited liability company
8 existing under the laws of the State of Alabama, with a mailing address of P.O. Box 2863,
9 Tuscaloosa, Alabama 35403.

10 2. Plaintiff Beazer filed this action on October 29, 2009, asserting claims
11 against defendants arising out of a residential real property development where CW was
12 the owner of the property, Beazer was the developer, and NSFSB was the lender to CW for
13 construction finance.

14 3. Beazer alleges that, in May 2009, CW defaulted under its obligations to
15 Beazer pursuant to the construction agreement between those parties.

16 4. On December 18, 2009, after this litigation was filed, the FDIC was
17 appointed by the Office of Thrift Supervision (“OTS”) as receiver for NSFSB.

18 5. On March 23, 2010, the FDIC, as receiver for NSFSB, executed an
19 Assignment Of Deed Of Trust And Fixture Filing and “such other documents, agreements,
20 instruments and other collateral that evidence, secure or otherwise relate to the assignor’s
21 right, title or interest in and to the Deed of Trust and/or the Note and/or the Loan
22 evidenced by the Note” (“FDIC Assignment of Deed of Trust”) to and in favor of
23 Beal Bank.

24 6. On March 23, 2010, the FDIC, as receiver for NSFSB, executed an
25 Assignment Of Non-Disturbance, Attornment And Subordination Agreement (“FDIC
26 Assignment of NDSA”) to and in favor of Beal Bank, assigning the Non-Disturbance,
27 Attornment And Subordination Agreement (“NDSA”) by and among NSFSB, Beazer and
28 CW dated December 20, 2006.

1 7. On March 23, 2010, Beal Bank and its affiliates executed further
2 assignments whereby they assigned the Deed of Trust and the NDSA such that LPP was
3 the ultimate assignee of the Deed of Trust, the NDSA, and such other documents,
4 agreements, instruments, and other collateral that evidence, secure, or otherwise relate to
5 NSFSB's right, title, or interest in and to the Deed of Trust, and/or the Note, and/or the
6 Loan evidenced by the Note.

7 8. On October 21, 2010, LPP executed an Assignment Of Deed Of Trust And
8 Fixture Filing ("LLP Assignment of Deed of Trust"), an Assignment Of Non-Disturbance,
9 Attornment And Subordination Agreement (Arden Park, Clark County, Nevada) ("LPP
10 Assignment of NDSA"), and Assignment Of Assignment Of Rights Under Agreement And
11 Proceeds And Interest In Escrow (Arden Park) ("LPP Assignment of Rights") to and in
12 favor of Craig Asset Holdings, LLC. As the assignee of LPP's interest in the Deed of
13 Trust and other loan documents, as well as the NDSA, Craig owns a security interest in the
14 property at issue in this matter and should be substituted for LPP as a defendant to the
15 claims asserted by Beazer in this action. Further, because Craig has been assigned LPP's
16 interest in the loan documents that give rise to the cross-claims and third-party claims for
17 default of those loan documents by CW and Cork, Craig should also be substituted for LPP
18 as the party-in-interest in prosecuting those claims.

19 9. In further support of this Motion, Craig relies upon the LPP's Motion filed
20 May 3, 2010, and the Declaration of Lisa Cavender, filed in support of LPP's Motion.¹

21 10. In further support of its motion, Craig relies on the Amended Declaration of
22 Ralph R. Banks III, filed contemporaneously herewith.

23 WHEREFORE, Craig Asset Holdings, LLC respectfully requests that this Court
24 grant this motion and enter an order substituting Craig Asset Holdings, LLC in place of
25 LPP Mortgage, Limited as defendant to the claims asserted by Beazer and as cross-
26 plaintiff, and third-party plaintiff.

27 _____
28 ¹ For the Court's convenience, a copy of LPP's Motion and the Declaration of Lisa
Cavender are respectfully submitted herewith.

1 DATED: November 2, 2010.

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2 By

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CERTIFICATE OF SERVICE

13 I hereby certify that on November 2, 2010, I electronically transmitted the attached
14 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
15 Notice of Electronic Filing to the following CM/ECF registrants:

17 Robert McCoy MORRIS PETERSON 18 900 Bank of America Plaza 300 South Fourth Street 19 Las Vegas, Nevada 89101	Kirsten A. Roe Worley Watt, Tieder, Hoffar & Fitzgerald, L.L.P. 20 2040 Main Street, Suite 300 Irvine, CA 92614
21 Robert C. Carlson, Esq. Megan K. Dorsey, Esq. 22 Koeller, Nebeker, Carlson & Haluck, LLP 300 S. Fourth Street, Suite 500 23 Las Vegas, NV 89101	Andrew J. Detherage, Esq. Karoline E. Jackson, Esq. Monica Brownewell, Esq. Barnes & Thornburg LLP 11 S. Meridian Street Indianapolis, IN 46204

IT IS SO ORDERED.

[Signature]

UNITED STATES MAGISTRATE JUDGE
DATED: 11-3-10

/s/ Cathy Russell